IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DENNIS T. EASTMAN,

OPINION and ORDER

Plaintiff,

11-cv-858-bbc

v.

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

- -

Plaintiff Dennis Eastman contends that he has been disabled by his back pain and arthritis since December 2006. His claim for disability insurance benefits was rejected by an administrative law judge. He seeks review of that decision under 42 U.S.C. § 405(g), contending that the administrative law judge failed to consider all of the facts in the record and made improper medical and credibility determinations.

After reviewing the record, I conclude that the administrative law judge's decision is supported by substantial evidence. Although plaintiff may suffer from back pain and arthritis now, he did not present any evidence from which the administrative law judge could have concluded that he had a severe medically determinable impairment during the relevant time period. Therefore, I am affirming the denial of benefits.

The following facts are drawn from the administrative record (AR).

FACTS

A. Background

Plaintiff Dennis Eastman worked as a construction truck driver for 38 years. In the early 1990s, he had two surgeries on his neck to remove two disks and fuse three vertebrae. After those surgeries, he continued to work as a truck driver until December 2006, when he felt a "pop" in his low back. AR 23. He stopped working in 2006, when he was 58, and has not held a full-time job since then.

Plaintiff last met the insured status requirements of the Social Security Act on March 31, 2008, his "date of last insured." Thus, to qualify for disability benefits under the disability insurance program, plaintiff was required to establish that he had a disability before March 31, 2008.

B. Medical Visits after December 2006 and before March 31, 2008

In January 2007, plaintiff saw Dr. Terrance Moe about pain in various areas. He complained specifically about a pulled muscle in his groin and back pain that had flared up while helping to move kitchen equipment. He told Moe that he was in pain "24/7." AR 169. Moe noted that plaintiff had taken Vicodin "off and on in minimal amounts." He prescribed Vicodin and Flexeril, noting that these medications "help[ed]" plaintiff. Id. There was no indication in Dr. Moe's progress notes of a physical examination or of range of motion, strength or neurological tests.

Plaintiff did not see Dr. Moe again until January 14, 2008. On that date, he saw him

about his blood pressure and to ask for medication to help quit smoking. AR 167. Moe noted under plaintiff's "list of medications" that plaintiff had been prescribed Vicodin for back pain but that plaintiff "hasn't needed [it] lately." Id.

C. Medical Visits after March 31, 2008

Plaintiff saw Dr. Moe in June 2008 about hypertension. AR 166. Nothing in the progress notes indicates that plaintiff complained of back pain. Moe recommended that plaintiff exercise on the treadmill for his hypertension.

In August 2008, plaintiff started seeing Dr. Byrne at the Ministry Medical Group with complaints about coughing and sleep problems. AR 175, 177. The first time Dr. Byrne mentioned plaintiff's back pain in his medical notes was in April 2009, when plaintiff saw Dr. Byrne for a number of problems, including low back and cervical spine pain. AR. 173-74. Byrne noted that plaintiff "[v]ery occasionally uses Vicodin for the pain," and prescribed more Vicodin, noting that the prescription would last a year or two. Id. Plaintiff saw Dr. Byrne or another physician at Ministry Medical Group several more times in 2009 and complained about neck or back pain during some of those visits. In particular, he saw Dr. Byrne about back problems on September 10, 2009. AR 348. Byrne noted that plaintiff was in "no obvious distress"; had an "unremarkable gait"; and had pain in his low back during examination. Id. Byrne ordered an MRI, gave plaintiff a Medrol Dosepak and prescribed Gabapentin and Vicodin, telling plaintiff how to "ramp up" his dosing. Byrne noted that with these medications, "hopefully [plaintiff's] low back and neck pain will be

under control." Id. At a follow-up appointment in September, Dr. Byrne noted that the Gabapentin "evidently [was] helping" plaintiff with his back pain. AR 347.

Plaintiff had MRI scans of his lumbar and cervical spine on September 16, 2009 at Eagle River Memorial Hospital. The scan of his lumbar spine showed bulging discs and some degeneration and abnormalities that, according to the report, could be irritating nerves and causing pain or other symptoms. AR 213-14. The cervical spine MRI identified some mild disc degeneration and abnormalities at C5 through C7, including a "marked" abnormality at C4-5, that could be "symptom generator[s]." AR 215-16.

In October 2009, plaintiff saw Dr. Byrne again. Byrne reviewed the information from the MRI, and noted that plaintiff's pain stemmed from his "severe degenerative cervical condition, in particular at C-4 and C-5." AR 344. Byrne also noted that plaintiff "has no insurance and surgical option is not possible." Id. Byrne prescribed Vicodin for the pain.

D. Functional Capacity Assessment

On November 23-24, 2009, plaintiff underwent a functional capacity evaluation at Howard Medical Center. He had difficult completing some of the activities on both days, including the walking, standing and sitting activities. AR. 203. The assessment concluded that plaintiff could lift 23 pounds occasionally, 11.5 pounds frequently and 5.75 pounds constantly, could sit "occasionally" and could climb stairs "frequently," with rest breaks. AR 211. The assessment noted that plaintiff had not been able to complete the full walk test. Id.

E. Opinions of Consulting Physicians

Plaintiff applied for disability insurance benefits on April 14, 2009, contending that he had been disabled since December 10, 2006 by back pain and arthritis. Two consulting doctors considered plaintiff's claim. Dr. Pat Chan completed a Residual Functional Capacity Assessment of plaintiff on August 17, 2009 (before plaintiff's September 16, 2009 MRI at the Eagle River hospital and his November 2009 functional capacity assessment at Howard Medical Center). Chan noted that plaintiff's primary diagnosis was back pain, noting that "[t]he available medical records during this time period (12/06 to 3/31/08) indicate back pain with arthritis of hands and shoulders." AR 195. However, the doctor noted that there were "no available medical findings during this period . . .with regard to range of motion, strength or neurological findings" and that plaintiff's "symptoms and limitations are not fully supported by the available evidence." AR 194. She concluded that plaintiff was "only partially credible" and that he could likely lift 50 pounds occasionally and 25 pounds frequently; he could sit, stand or walk for six hours in an eight-hour workday; and he had no limitations with respect to pushing and pulling, posture or manipulation. AR 189-191.

Dr. Mina Khorshidi completed a "case analysis" on November 25, 2009. AR 200. (It is not clear what records she considered in her analysis). Her case analysis consisted only of a couple of sentences about plaintiff's claim and a conclusion that "[r]eview of the medical evidence in file indicates there is no medically determinable impairment prior to the date last insured. This results in a denial as Not Severe. Credibility assessment is not appropriate for a period this far in the past." AR 200.

F. Hearing

A video hearing was held on February 24, 2011, before Administrative Law Judge Sheldon P. Zisook. Plaintiff was represented by counsel; the commissioner presented no witnesses. Plaintiff testified that he had neck and back pain, as well as arthritis and pain in his shoulders, fingers and legs. AR 23-25. He stated that he had had problems since 2006, but that his pain had gotten worse in 2008 and 2009. AR 32. When asked how his impairments affected his ability to work, he stated that the arthritis in his shoulders and hands prevented him from lifting more than 10 pounds, AR 27, and made it difficult to bend and pick up things, but that he could still use a keyboard and count change without problems. AR 26. He also stated that he had a hard time sitting or standing in one place for long periods and had alternate between positions, AR 28, though sometimes he could sit in place for a few hours in an upright chair. AR 29. Plaintiff stated that most days he watched television and some days he did not even get out of bed, which was why he was taking pills for depression. AR 31.

When asked what types of treatment he used for his pain, plaintiff testified that he could not get surgery because he did not have insurance. AR 31. He stated that he took medication for migraines and only occasionally took Vicodin for his back pain because he did not want to "get hooked" on it. AR 24. He also stated that taking his pain medication enabled him to lift items overhead and to complete the physical activities required for the functional capacity evaluation he underwent in November 2009. AR 27-28. The administrative law judge asked plaintiff whether any of his doctors had ever proposed him

limitations for what he could and could not do, and plaintiff stated that he had had limitations on lifting in 1993, after his neck surgeries. AR 30.

G. Administrative Law Judge's Decision

The administrative law judge denied plaintiff's claim on March 14, 2011. First, he determined that plaintiff's alleged onset date was December 10, 2006, that the date plaintiff was last insured was March 31, 2008 and that he had not engaged in substantial gainful activity between December 2006 and March 2008. AR 11. The next question under the required analysis set forth in 20 C.F.R. § 404.1520 was whether plaintiff had a severe medically determinable impairment between December 10, 2006 and March 31, 2008. Id. § 404.1520(c). The administrative law judge concluded that no medical evidence supported plaintiff's claim that he had such an impairment during the relevant time period. AR 11. As a result, the administrative law judge denied plaintiff's claim and did not proceed further in the sequential evaluation.

In concluding that plaintiff had no medically determinable impairment, the administrative law judge stated several times that there were no medical records from the period between December 2006 and March 2008 to support plaintiff's claim that he had been disabled by pain or that he had any medically determinable impairment at all. E.g., AR 13 ("Through the date last insured, the medical evidence shows no evidence of any objective, clinical or laboratory findings, such as radiology reports or laboratory reports, or diagnoses to support the claimant's allegations of pain so severe that it was disabling, rendering him

unable to work."; "[T]he medical evidence of record prior to the claimant's last insured date . . . does not establish any medically determinable impairment, under the Regulations"); AR 14 (""[T]here were no medical signs or laboratory findings to substantiate the existence of a medically determinable impairment."). The administrative law judge also noted that plaintiff's failure to seek significant medical attention between 2006 and 2008 suggested that he did not have a severe impairment. He stated specifically that:

> Noteworthy in this case is the scarcity of medical observations since the alleged onset date, due to the fact that the claimant has not sought frequent medical treatment since that time. Indeed, there is no evidence of hospitalizations, physical therapy, pain clinic treatment, surgery or other, similar treatment for claimant's alleged pain. Treating and examining physicians have not observed the advanced functional restrictions and complete prostration alleged by claimant. The record does not confirm that he receives any type of treatment other than routine medication. It would seem that someone with a condition as severe as is alleged by the claimant would seek more frequent medical care. Lack of aggressive treatment for a condition is not indicative of symptoms of a severity that would prohibit all work activity.

AR 13.

Additionally, the administrative law judge stated that the records that did exist from that period contained "no evidence of any physical examinations findings, no reports of decreased range of motion, strength, or neurological findings." AR 12-13. Instead, the progress notes from plaintiff's two appointments during that period suggested that plaintiff's pain was controlled with medication. AR 12 (administrative law judge noting that "[p]rogress notes dated January 5, 2007 states that the prescriptions of Vicodin and Flexeral "helps[,]" and "treatment records dated January 14, 2008 shows that the claimant had been prescribed Vicodin for back pain . . . [but] that the claimant had not needed the medication

lately."). The administrative law judge also noted that even after 2008, plaintiff did not seek consistent treatment for his symptoms. AR 12 (citing Dr. Byrne's progress notes from April 2009 that stated, "[plaintiff] very occasionally uses Vicodin for the pain"). He stated that although plaintiff could not be faulted for forgoing expensive surgical options, he had not tried alternative treatments, such as physical therapy, injections or other types of pain medication, which indicated to him that plaintiff's pain was not severe. AR 13.

The administrative law judge cited an application plaintiff filed for a Class B Disability Permit for crossbow hunting in November 2009, finding the application an indication that plaintiff might be overstating his symptoms. In particular, the application suggested to him that plaintiff could still engage in recreational activities. AR 12. (The crossbow hunting application process required plaintiff to perform a number of physical tests to determine whether he was disabled. He passed most of the range of motion tests, with the exception of shoulder abduction and wrist extension, and the occupational therapist performing the evaluation recommended that his application be approved. AR 218.) Similarly, the administrative law judge cited an application for rehabilitation services that plaintiff had submitted to Ministry Rehabilitation in November 2009, in which plaintiff wrote that he liked to play golf and snowmobile, noting that plaintiff had "described activities and hobbies that he continued to engage in despite his subjective reports of pain." Id. (The administrative law judge did not mention that plaintiff had written on the application that he could not do any activities at the present time because of his pain. AR 232.)

Finally, the administrative law judge stated that he was giving "considerable weight" to Dr. Chan's physical assessment of plaintiff because he agreed that "allegations of symptoms and limitations are not fully supported by the medical evidence of record." AR 14. The administrative law judge did not mention Dr. Khorshidi's case analysis, the functional capacity evaluation performed at Howard Medical Center or the results of plaintiff's September 2009 MRI.

OPINION

"The standard of review that governs decisions in disability-benefit cases is deferential." Eichstadt v. Astrue, 534 F.3d 663, 665 (7th Cir. 2008). In reviewing a final decision by the commissioner, the court must evaluate "only whether the final decision of the [Commissioner] is both supported by substantial evidence and based on the proper legal criteria." Id. (citation and quotation marks omitted). See also 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 401 (1971). The decision cannot stand if it lacks evidentiary support or "is so poorly articulated as to prevent meaningful review." Steele v. Barnhart, 290 F.3d 936, 940 (7th Cir. 2002). When the administrative law judge denies benefits, he must build a logical and accurate bridge from the evidence to his conclusion. Zurawski v. Halter, 245 F.3d 881, 887 (7th Cir. 2001).

Generally, administrative law judges are required to perform a five-step analysis when considering a claimant's application for disability insurance. 20 C.F.R. § 404.1520. In this case however, the administrative law judge ended his analysis at step 2 after concluding that

plaintiff did not have a severe medically determinable impairment that made him incapable of doing substantial gainful work. Plaintiff contends that the court should reject the administrative law judge's decision because the administrative law judge failed to consider all of the relevant evidence and the administrative law judge's credibility determination was flawed.

To prove that he was disabled, plaintiff had to show that he was unable to "engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C § 423(d)(1)(A). Plaintiff had to show that his impairment "result[ed] from anatomical, physiological, or psychological abnormalities which c[ould] be shown by medically acceptable clinical and laboratory diagnostic techniques." 20 C.F.R. § 404.1508. In other words, "[a] physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by [a claimant's own] statement of symptoms." Id.

The primary problem for plaintiff at the agency level was his failure to produce evidence showing a medical impairment from the period between his alleged onset date of December 10, 2006 and the expiration of his insured status on March 31, 2008. Although he testified that he became disabled and unable to work in 2006 when he felt a "pop" in his low back, he produced only one record from 2007 relating to medical treatment he received for back pain. AR 169. Further, that record, consisting of notes made by Dr. Moe, does not establish or even suggest that plaintiff's back pain was a severe impairment that rendered

him incapable of working at the time. It stated only that plaintiff had back pain, that he had taken Vicodin "off an on in minimal amounts" and that the Vicodin had "helped." Additionally, that record contained only a description of plaintiff's subjective symptoms and did not contain any observations by Dr. Moe or any laboratory findings or diagnoses.

Plaintiff saw Dr. Moe once more before his date of last insured, in January 2008, but that visit was to obtain medication to quit smoking, not to raise any complaints of back pain. The progress notes that plaintiff's back pain was a severe physical impairment at that time, or even that plaintiff complained about back pain at all. Rather, the only note related to plaintiff's back pain was the note under plaintiff's list of medications stating that plaintiff had been prescribed Vicodin for back pain but that he "hasn't needed [it] lately." AR 167. As the administrative law judge noted, plaintiff would have likely complained to his doctor about back, neck or shoulder pain and would have been using pain medication more frequently if the pain was as painful and disabling as he now alleges that it was. Schaaf v. Astrue, 602 F.3d 869, 876 (7th Cir. 2010) (stating that "the ALJ was entitled to infer that Schaaf would have told his doctors if he was experiencing excruciating pain").

Plaintiff did not see a doctor again before his date of last insured, and the record contains no evidence suggesting that plaintiff's condition changed significantly between January 2008 (the date of plaintiff's last visit) and March 31, 2008. Wilcox v. Astrue, No. 12-1484, 2012 WL 3590894, *4 (7th Cir. Aug. 22, 2012) (affirming denial of benefits where "[n]othing before the ALJ indicated that Wilcox's back or psychological condition had deteriorated between his medical examinations in the summer of 2008 and the end of his

insured status in December 2009"). Plaintiff gave no explanation at the hearing about why he did not seek medical attention during this time period.

In his brief in support of his request for review, plaintiff concedes that there was not much evidence dating between December 2006 and March 31, 2008 to support his claim. Instead, plaintiff contends that the administrative law judge put too much emphasis on the lack of medical evidence before March 31, 2008 and failed to consider the medical evidence post-dating March 31, 2008. In particular, plaintiff contends that the administrative law judge erred by failing to discuss the results of plaintiff's September 2009 MRI, which showed deterioration and abnormalities in his cervical and lumbar spine, because the abnormalities were "unlikely to have suddenly appeared" after March 31, 2008. Plt.'s Br., dkt. #14, at 7. Additionally, plaintiff contends that the administrative law judge erred by failing to discuss the results of the functional capacity evaluation plaintiff received in November 2009, which showed that his ability to stand and walk were limited.

Plaintiff argues that a claimant does not always need contemporaneous medical evidence of his condition to show that he had a severe medically determinable impairment during the relevant time period. This is true, to an extent. As the court of appeals has explained, "what is required [to establish a retrospective diagnosis] is contemporaneous corroboration [contemporaneous with the period of coverage, that is] of the . . . illness, . . . not necessarily contemporaneous medical corroboration." Allord v. Barnhart, 455 F.3d 818, 822 (7th Cir. 2006) (brackets in original) (citation omitted). See also Newell v. Commissioner of Social Security, 347 F.3d 541, 547 (3d Cir. 2003) ("Retrospective

diagnosis of an impairment, even if uncorroborated by contemporaneous medical records, but corroborated by lay evidence relating back to the claimed period of disability, can support a finding of past impairment."). Additionally, the court of appeals has stated that "contemporaneous corroboration is not *always* required—just usually." Allord, 455 F.3d at 822 (emphasis in original). In particular, contemporaneous corroboration is not always necessary if a disease or condition follows a well-known progression so that a date of disability can be inferred after the fact. Id.

The problem for plaintiff is that he submitted no contemporaneous corroboration at all, medical or otherwise, and no evidence suggesting that his current condition is the type of condition that follows a well-known progression such that a date of severe impairment could be inferred after the fact without contemporaneous corroboration. Plaintiff did not submit any opinions from his treating physicians about his actual or probable physical impairments before March 31, 2008 or about whether his current physical conditions relate to his condition during the relevant time period. The record contains no information about how, whether and when plaintiff's condition progressed. Moreover, the limited evidence that is in the record suggests that to the extent plaintiff's condition progressed, it happened after March 31, 2008 or later. After plaintiff's visit with Dr. Moe in January 2007, he saw doctors for other reasons but never complained to a doctor about back or neck pain again until April 2009, around the same time he filed his claim for disability insurance. Schaaf, 602 F.3d at 876 ("absence of a history of seeking pain treatment despite other doctor visits suggests that Schaaf's current treatment was effective"). As the administrative law judge

noted, even when plaintiff complained about his back pain in 2009, after the date he was last insured, he was not taking Vicodin regularly or engaged in any other treatment. AR 12. Thus, although the medical records post-dating March 31, 2008 provide information about plaintiff's physical condition at the time the records were created, nothing in this evidence sheds light on plaintiff's probable condition between December 2006 and March 31, 2008. Cf. Martinez v. Astrue, 630 F.3d 693, 699 (7th Cir. 2011) (affirming administrative law judge's determination that claimant was not disabled in case in which only medical opinion submitted was based on examinations after date of last insured and there was evidence that claimant was able to perform some work and treat pain with medication during relevant time period); Rubio v. Astrue, 10 C 6529, 2011 WL 3796755, *9 (N.D. Ill. Aug. 24, 2011) (affirming administrative law judge's decision denying benefits where there was no contemporaneous evidence of claimant's alleged disability and no physician's opinion evaluating claimant's condition prior to her last insured date).

With respect to the MRI and functional capacity evaluation results in particular, those simply described plaintiff's condition as of September and November 2009. It is not enough for plaintiff to point to evidence suggesting that he had a physical impairment more than one year after the date he was last insured. Eichstadt, 534 F.3d at 666 (holding that administrative law judge concluded reasonably that although evidence post-dating the last insured date tended to suggest that claimant was disabled, it failed to support claimant's assertion that she was disabled prior to her last insured date); Rubio, 2011 WL 3796755 at *9 ("worsening of a claimant's condition after the date last insured does not provide a basis for granting benefits during the relevant time period") (citing Thomas v. Astrue, 352 F.

Appx. 115, 116 (7th Cir. 2009) (affirming administrative law judge's denial of benefits even though claimant had significant symptoms of leukemia just after the last insured date because physician who evaluated claimant before that date found condition to be asymptomatic)). Plaintiff asserts that his 2009 test results were evidence of his condition before March 31, 2008 but he has not provided any evidence to that effect, such as an opinion from his treating physician interpreting the MRI or functional capacity evaluation results. Thus, although the administrative law judge "must confront the evidence that does not support his conclusion," Indoranto v. Barnhart, 374 F.3d 470, 474 (7th Cir. 2004), the MRI results and functional capacity evaluation were not clearly contrary to the administrative law judge's decision. Accordingly, I will not vacate the administrative law judge's decision simply because the administrative law judge did not discuss the MRI or functional capacity evaluation specifically. Simila v. Astrue, 573 F.3d 503, 516 (7th Cir. 2009) (administrative law judge "not required to discuss every piece of evidence," so long as there is "logical bridge" from evidence to administrative law judge's conclusion).

Finally, plaintiff takes issue with the administrative law judge's finding that his allegations regarding his symptoms and limitations were not totally credible, contending that the administrative law judge failed to apply the guidelines in Social Security Ruling 96-7p regarding credibility determinations. In his written decision, the administrative law judge included several reasons why he was discounting plaintiff's own descriptions of symptoms, including plaintiff's failure to seek sought regular treatment from a physician and his apparent lack of need for pain medication on a regular basis. AR 12-13. Additionally, the administrative law judge noted that plaintiff had applied for a crossbow hunting permit and

had "described activities and hobbies that he continued to engage in despite his subjective reports of pain." AR 12. Plaintiff contends that in reaching these conclusions, the administrative law judge failed to consider plaintiff's statements that he could not afford surgery and that he did not take pain medication often because he did not want to become addicted. With respect to the administrative law judge's reference to the crossbow permit and alleged other hobbies, plaintiff points out that the crossbow application was a "disability" permit and that plaintiff reported that he could not engage in any hobbies or activities because of his pain.

I agree with plaintiff that the administrative law judge's decision includes some errors. The administrative law judge's conclusion that plaintiff participated in hobbies and activities was not supported by the document to which he cited. Additionally, the administrative law judge did not explain why he believed plaintiff's application for a *disability* hunting permit was evidence that plaintiff was exaggerating his symptoms. On the other hand, the administrative law judge did an adequate job of addressing plaintiff's statement that he could not afford surgery and was worried about becoming addicted to pain medication by noting that plaintiff did not seek out any less expensive treatments and that the medical record suggested that plaintiff did not "need" pain medication for his back on a regular basis. Nothing in the medical record supports plaintiff's suggestion that he consciously chose not to take pain medication despite needing it.

In disability insurance cases, an administrative law judge's credibility determinations are "afforded special deference because the administrative law judge is in the best position to see and hear the witness and determine credibility." Eichstadt, 534 F.3d at 667-68

(citation and quotation marks omitted). Thus, courts may overturn an administrative law judge's credibility determinations only if they are "patently wrong." Id. This means that the administrative law judge's reasoning need not be "flawless." Simila, 573 F.3d at 517. In this case, as in Eichstadt, 534 F.3d at 668, the administrative law judge's "credibility finding was grounded in the lack of evidence available with respect to [plaintiff's] condition during the critical period prior to [his] date last insured." As explained above, the record supports this assessment. It was plaintiff's burden to provide medical evidence to support his claim of disability. Unfortunately, he did not provide evidence sufficient to establish that he had a severe medical impairment during the relevant time period. Id. ("The claimant bears the burden of producing medical evidence that supports [his] claims of disability. That means that the claimant bears the risk of uncertainty, even if the reason for the sparse record is simply a long lapse of time.")

More important, even if plaintiff is correct that the administrative law judge's credibility findings were incomplete, this would not be sufficient reason to reverse the administrative law judge's decision. Before considering plaintiff's credibility, the administrative law judge was required to determine whether plaintiff had a severe medically determinable impairment on or before March 31, 2008. 20 C.F.R. § 404.1520(c). There was no medical evidence to support a conclusion that plaintiff had a severe medically determinable impairment at the relevant time. Rather, the only evidence in the record to support plaintiff's claim was his own subjective testimony. Under the regulations, that was insufficient to establish an impairment. 20 C.F.R. § 404.1529(a) ("statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical

signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged. . . ."). Thus, because plaintiff had not produced sufficient medical evidence to support his claim that he had a severe medically determinable impairment, the administrative law judge was not required to evaluate plaintiff's credibility using the factors in SSR 96-7p. Indoranto, 374 F.3d at 474 ("the ALJ must consider subjective complaints of pain *if* the claimant can establish a medically determined impairment that could reasonably be expected to produce the pain") (emphases added); Social Security Ruling 96-7p.

ORDER

IT IS ORDERED that plaintiff Dennis Eastman's motion for summary judgment is DENIED and the decision of defendant Michael J. Astrue, Commissioner of Social Security, denying plaintiff's application for disability insurance benefits is AFFIRMED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 11th day of October, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge